Pendaftar Mualaf Negeri Perlis & Ors v Loh Siew Hong and another appeal

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 08(f)-35–02 OF 2024(W) AND 08(f)-47–02 OF 2024(W)
TENGKU MAIMUN CHIEF JUSTICE, NALLINI PATHMANATHAN AND ABU BAKAR JAIS FCJJ
4 FEBRUARY 2025

Civil Procedure — Appeal — Leave to appeal — Leave to appeal to Federal Court against decision of Court of Appeal — Whether leave application had to be dismissed as appeal had no hope of success — Whether law was established beyond doubt that under Federal Constitution both parents must consent to conversion of minor to Islam regardless of what Islamic law in the individual States said — Whether appellants' attempts to argue otherwise were unsustainable

The respondent and her ex-Hindu husband ('N') had three children from their marriage in 2008. N subsequently forced the respondent to leave the matrimonial home without her children. The respondent obtained a divorce from N and a court order granting her sole guardianship, care and control of the children. Despite the order, N never returned the children. He then converted to Islam and purportedly converted the three children as well without the respondent's consent. The first and second appellants maintained that the purported conversions of the children were valid under the Islamic law then in force in Perlis. The respondent challenged the appellants' decision by way of judicial review in the High Court, but failed in her attempt. She, however, succeeded on appeal to the Court of Appeal ('COA'), which set aside the High Court's decision and allowed the judicial review application. In their instant application for leave to appeal against the COA's decision under s 96 of the Courts of Judicature Act 1964, the appellants raised the following grounds: (a) that the Bahasa Malaysia version of the Federal Constitution ('the FC') was officially prescribed under art 160(a) of the FC when the Yang di-Pertuan Agong attended the launch of its translation; (b) that the terms 'parent' and 'parents' were used in the FC to connote specific meanings in specific contexts; (c) that the Federal Court's decision in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 ('Indira Gandhi') was limited only to Wilayah Persekutuan Putrajaya, Kuala Lumpur and Labuan and did not apply to Perlis; and (d) that the present case was akin in fact and principle to the case of *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal* [2025] 1 MLJ 334 ('Dahlia Dhaima') and, accordingly, the decision in that case should apply to hold that the respondent's children in the instant case had been validly converted.

Held, dismissing the leave application:

(1) **(per Nallini Pathmanathan FCJ)** The COA had correctly concluded that the unilateral conversion of the respondent's children without her consent was void. The appellants' arguments would, in effect, reverse the Federal Court's holding in *Indira Gandhi* by encouraging the unconstitutional practice of unilateral conversion to persist. Such unilateral conversion, in all its forms, was unjustifiably detrimental to the welfare of the child. There was no prima facie case of success in the appeal and therefore the application for leave to appeal was dismissed (see paras 24–26).

(2) **(per Nallini Pathmanathan FCJ)** The authoritative text of the Federal Constitution ('FC') was the English version. As explained in *Indira Gandhi*, the Yang di-Pertuan Agong had not prescribed the Bahasa Malaysia translation as authoritative, as required by art 160B of the FC. The appellants' contention on this point could not stand (see paras 12–13).

(3) **(per Nallini Pathmanathan FCJ)** *Indira Gandhi* ruled that matters of constitutional and statutory interpretation, as well as the review of actions of public authorities, were squarely within the jurisdiction of the Civil Court and that if a statutory provision stated that a certificate of conversion to Islam was conclusive proof of the facts stated therein (see, for instance, s 112(2) of the Perlis Administration of the Religion of Islam Enactment 2006 and s 101(2) of the Administration of the Religion of Islam (Perak) Enactment 2004), this only related to the facts stated in the certificate, eg that the relevant names had been registered with the Registrar of Muallafs. It did not mean that the certificates and the conversions that it recorded were legal (see para 14).

(4) **(per Nallini Pathmanathan FCJ)** *Indira Gandhi* ruled that the consent of both parents was constitutionally required in order for certificates of conversion to have the force of law. In other words, the word 'parent' in art 12(4) of the FC should be read as meaning both parents. The exhaustive examination in *Indira Gandhi* of the specific constitutional context and subject-matter of art 12(4) explained why this provision required 'parent' to be read as being plural. The appellants' argument that 'parent' and 'parents' were sometimes used to specifically denote the singular and plural in other constitutional provisions did not withstand scrutiny (see para 14).

(5) **(per Nallini Pathmanathan FCJ)** The Syariah Court had full power to decide on all matters within its jurisdiction. Where, however, the Syariah Court's decision fell outside its jurisdiction, the Civil Court retained the supervisory power to correct the error and set aside the decision. In the context of conversion, if the Syariah Court incorrectly determined that

what was in fact an ab initio case was a renunciation case, the Civil Court had the power to step in and correct this (see para 14).

(6) **(per Nallini Pathmanathan FCJ)** Consent or agreement could not confer jurisdiction upon a court or tribunal if it did not have the jurisdiction in the first place. The Civil Court had no jurisdiction to hear and determine a renunciation case (ie, where one sought a declaration that he was no longer a Muslim). Similarly, the Syariah Court had no jurisdiction if the matter before it was an ab initio case (ie where the declaration sought was that the applicant was never a Muslim) (see paras 14 & 18).

(7) **(per Nallini Pathmanathan FCJ)** The principles expounded in *Indira Gandhi* had been re-affirmed and developed upon at length in several subsequent decisions of the Federal Court and there could be no argument of any merit that *Indira Gandhi* was decided per incuriam or that it applied only to the Wilayah Persekutuan and was not binding throughout the nation (see paras 15–16 & 19).

(8) **(per Nallini Pathmanathan FCJ)** *Dahlia Dhaima* did not apply to the instant case. The effect of the illegality caused by the failure to obtain both parents' consent to the conversion of minors, as required by the FC, could not be cured by other extraneous factors (see paras 20–21).

(9) **(per Abu Bakar Jais FCJ, supporting)** It was crucial to note that in *Dahlia Dhaima*, the appellant was not a minor when she approached the Syariah Court for relief. More importantly, the appellant admitted that she was a Muslim when she sought to be declared that she was no longer a Muslim. *Dahlia Dhaima* must be taken or understood according to the peculiar facts of that case (see paras 32–33).

[Bahasa Malaysia summary

Responden dan bekas suaminya yang beragama Hindu ('N') mempunyai tiga orang anak hasil dari perkahwinan mereka pada tahun 2008. N kemudiannya memaksa responden meninggalkan rumah perkahwinan tanpa anak-anaknya. Responden kemudiannya mendapatkan perceraian daripada N dan perintah mahkamah yang memberikan penjagaan, penjagaan dan kawalan tunggalnya ke atas kanak-kanak tersebut. Walaupun terdapat perintah itu, N tidak pernah memulangkan kanak-kanak tersebut. Dia kemudian memeluk Islam dan menukar agama ketiga-tiga kanak-kanak itu tanpa kebenaran responden. Perayu pertama dan kedua menghujahkan bahawa penukaran agama kanak-kanak itu adalah sah di bawah undang-undang Islam yang berkuat kuasa ketika itu di Perlis. Responden mencabar keputusan perayu melalui semakan kehakiman di Mahkamah Tinggi, tetapi gagal dalam percubaannya. Walaubagaimanapun, dia berjaya merayu ke Mahkamah Rayuan ('MR') yang mengenepikan keputusan Mahkamah Tinggi dan membenarkan permohonan semakan kehakiman. Dalam permohonan untuk kebenaran merayu terhadap

keputusan MR di bawah seksyen 96 Akta Mahkamah Kehakiman 1964, perayu mengemukakan alasan-alasan berikut: (a) bahawa Perlembagaan Persekutuan ('PP') versi Bahasa Malaysia telah ditetapkan secara rasmi menurut seksyen 160(a) PP apabila Yang di-Pertuan Agong telah menghadiri pelancaran terjemahannya; (b) bahawa istilah 'ibu bapa' dan 'kedua-dua ibu bapa' yang digunakan dalam PP mempunyai makna tertentu menurut konteks tertentu; (c) bahawa keputusan Mahkamah Persekutuan dalam *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 ('Indira Gandhi') hanya terhad kepada Wilayah Persekutuan Putrajaya, Kuala Lumpur dan Labuan dan tidak terpakai kepada Perlis; dan (e) bahawa kes ini adalah serupa dari segi fakta dan prinsip dengan kes *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal* [2025] 1 MLJ 334 ('Dahlia Dhaima') dan oleh itu, keputusan dalam kes itu harus terpakai untuk memutuskan bahawa anak-anak responden dalam kes ini telah bertukar agama secara sah.

Diputuskan, menolak permohonan kebenaran:

(1) **(oleh Nallini Pathmanathan HMP)** MR telah membuat keputusan yang betul bahawa penukaran agama secara satu pihak anak-anak responden tanpa kebenarannya adalah tidak sah. Hujahan perayu akan, pada hakikatnya, membalikkan keputusan Mahkamah Persekutuan dalam kes *Indira Gandhi* dengan menggalakkan amalan penukaran agama secara satu pihak yang tidak berperlembagaan. Penukaran satu pihak sedemikian dalam semua bentuk adalah tidak wajar dan memudaratkan kebajikan kanak-kanak itu. Tiada kes prima facie untuk rayuan ini berjaya dan oleh itu permohonan kebenaran merayu telah ditolak (lihat perenggan 24–26).

(2) **(oleh Nallini Pathmanathan HMP)** Teks rasmi Perlembagaan Persekutuan ('PP') adalah versi bahasa Inggeris. Seperti yang dijelaskan dalam *Indira Gandhi*, Yang di-Pertuan Agong tidak menetapkan versi Bahasa Malaysia sebagai teks rasmi seperti yang dikehendaki oleh perkara 160B PP. Hujahan perayu mengenai perkara ini tidak dapat dipertahankan (lihat perenggan 12–13).

(3) **(oleh Nallini Pathmanathan HMP)** *Indira Gandhi* memutuskan bahawa hal-hal tafsiran perlembagaan dan undang-undang, serta semakan tindakan pihak berkuasa awam adalah berada dalam bidang kuasa Mahkamah Sivil dan sekiranya peruntukan undang-undang menyatakan bahawa sijil penukaran agama Islam adalah bukti konklusif fakta-fakta yang dinyatakan di dalamnya (lihat sebagai contoh, s 112(2) Pentadbiran Perlis Enakmen Agama Islam 2006 dan s 101(2) Pentadbiran Enakmen Agama Islam (Perak) 2004), hal ini hanya berkaitan dengan fakta yang dinyatakan dalam sijil, contohnya nama-nama yang berkaitan telah didaftarkan dengan Pendaftar Muallaf.

Ini tidak bermakna bahawa sijil dan penukaran agama yang direkodkannya adalah sah (lihat perenggan 14). A

(4) **(oleh Nallini Pathmanathan HMP)** *Indira Gandhi* memutuskan bahawa persetujuan kedua-dua ibu bapa diperlukan secara perlembagaan supaya sijil penukaran agama mempunyai kuasa undang-undang. Dalam erti kata lain, perkataan 'ibu bapa' dalam perkara 12(4) PP harus dibaca sebagai bermaksud kedua-dua ibu bapa. Penelitian menyeluruh dalam kes *Indira Gandhi* mengenai konteks perlembagaan tertentu dan perkara 12(4) menjelaskan mengapa peruntukan ini memerlukan 'ibu bapa' dibaca sebagai jamak. Hujahan perayu bahawa 'ibu bapa' dan 'kedua-dua ibu bapa' kadang-kadang digunakan untuk secara khusus bermasud sebagai tunggal dan jamak dalam peruntukan perlembagaan lain tidak boleh dipertahankan (lihat perenggan 14). B C

(5) **(oleh Nallini Pathmanathan HMP)** Mahkamah Syariah mempunyai kuasa penuh untuk memutuskan semua perkara dalam bidang kuasanya. Walau bagaimanapun di mana keputusan Mahkamah Syariah berada di luar bidang kuasanya, Mahkamah Sivil mengekalkan kuasa penyeliaan untuk membetulkan kesilapan dan mengenepikan keputusan tersebut. Dalam konteks penukaran agama, sekiranya Mahkamah Syariah terlah terkhilaf menentukan bahawa kes yang sebenarnya merupakan kes ab initio adalah kes penukaran agama, Mahkamah Sivil mempunyai kuasa untuk campur tangan terhadap keputusan tersebut dan membetulkannya (lihat perenggan 14). D E

(6) **(oleh Nallini Pathmanathan HMP)** Persetujuan atau perjanjian tidak boleh memberikan bidang kuasa kepada mahkamah atau tribunal sekiranya ianya tidak mempunyai bidang kuasa pada asalnya. Mahkamah Sivil tidak mempunyai bidang kuasa untuk mendengar dan menentukan kes penukaran agama (iaitu di mana seseorang memohon pengisytiharan bahawa dia bukan lagi seorang Islam). Begitu juga Mahkamah Syariah tidak mempunyai bidang kuasa sekiranya perkara sebelum ini adalah kes ab initio (iaitu di mana pengisytiharan yang dipohon adalah bahawa pemohon tidak pernah beragama Islam) (lihat perenggan 14 & 18). F G

(7) **(oleh Nallini Pathmanathan HMP)**Prinsip-prinsip yang dihuraikan dalam kes *Indira Gandhi* telah disahkan dan digunapakai secara meluas di dalam beberapa keputusan Mahkamah Persekutuan berikutnya dan hujahan bahawa *Indira Gandhi* telah diputuskan secara per incuriam atau ianya hanya terpakai kepada Wilayah Persekutuan dan tidak mengikat di seluruh negara adalah tidak bermerit (lihat perenggan 15–16 & 19). H I

(8) **(oleh Nallini Pathmanathan HMP)** Kes *Dahlia Dhaima* tidak terpakai kepada kes ini. Kesan kepenyalahan undang-undang yang disebabkan oleh kegagalan untuk mendapatkan persetujuan kedua-dua ibu bapa untuk menukar agama kanak-kanak di bawah umur seperti yang

dikehendaki oleh PP tidak dapat dipulihkan oleh faktor luaran lain (lihat perenggan 20–21).

(9) **(oleh Abu Bakar Jais HMP)** Adalah penting untuk diambil perhatian bahawa dalam kes *Dahlia Dhaima,* perayu bukanlah merupakan kanak-kanak di bawah umur apabila dia memohon kepada Mahkamah Syariah untuk relif. Lebih penting lagi, perayu mengakui bahawa dia seorang Muslim apabila dia memohon untuk diisytiharkan bahawa dia bukan lagi seorang Islam. Kes *Dahlia Dhaima* mestilah difahami menurut fakta unik kes tersebut (lihat perenggan 32–33).]

Cases referred to

Alma Nudo Atenza v PP and another appeal [2019] 4 MLJ 1, FC (refd)
Azmi bin Mohamad Azam @ Roneey v Director of Jabatan Agama Islam Sarawak & Ors [2016] MLJU 1558; [2016] 6 CLJ 562, HC (refd)
Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal [2025] 1 MLJ 334; [2024] 5 CLJ 855, FC (distd)
Dhinesh a/l Tanaphll v Lembaga Pencegahan Jenayah & Ors [2022] 3 MLJ 356, FC (refd)
Eu Finance Berhad v Lim Yoke Foo [1982] 2 MLJ 37; [1982] CLJU 21, FC (refd)
Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 323, FC (refd)
Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545, FC (distd)
Ketheeswaran a/l Kanagaratnam & Anor v PP [2024] 1 MLJ 851, FC (refd)
Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain [2007] 4 MLJ 585, FC (refd)
Pendaftar Muallaf Wilayah Persekutuan v Lee Chang Yong & Ors and another appeal [2022] 1 MLJ 653, CA (refd)
Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 181; [2021] 3 CLJ 301, FC (refd)
SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener) [2022] 2 MLJ 356, FC (refd)
Viran a/l Nagapan v Deepa a/p Subramaniam and other appeals [2016] 1 MLJ 585, FC (refd)

Legislation referred to

Administration of the Religion of Islam (Perak) Enactment 2004 s 101(2)
Courts of Judicature Act 1964 s 96
Federal Constitution arts 12(4), 160(1), 160B, Ninth Schedule, List II, item 1
Law Reform (Marriage and Divorce) Act 1976
Administration of the Religion of Islam Enactment 2006 ss 112(2), 117(b)

Appeal from: *Loh Siew Hong v Pendaftar Mualaf Perlis & Ors* [2024] MLJU 3806 (Court of Appeal, Putrajaya)

Mohd Radhi bin Abas (with Ainul Wardah bt Shahidan) (Perlis State Legal Advisor's Office) in Civil Appeal No 08(f)-35–02 of 2024(W) for the first, third and fourth appellants.

Haniff Khatri (with Zainul Rijal bin Abu Bakar, Aidil Khalid, Hariz bin Yusoff, Danial Farhan bin Zainul Rijal and Ali Huzaifah bin Shariff Ahmed) (Chambers of Zainul Rijal) in Civil Appeal No 08(f)-35–02 of 2024(W) for the second appellant.

Mohd Radhi bin Abas (with Ainul Wardah bt Shahidan) (Perlis State Legal Advisor's Office) in Civil Appeal No 08(f)-47–02 of 2024(W) for the second respondent.

Srimurugan a/l Alagan (Shamsher Singh Thind, Gunamalar a/p Joorindanjn and Thian Yee Chin) (Srimurugan & Co) in Civil Appeal No 08(f)-35–02 of 2024(W) and 08(f)-47–02 of 2024(W) for the respondent.

Nallini Pathmanathan FCJ:

[1] This is an application for leave to appeal under s 96 of the Courts of Judicature Act 1964 ('the CJA') in respect of a decision handed down by the Court of Appeal on 22 January 2024.

FACTS

[2] The applicant was married to Nagahswaran a/l Muniandy ('Nagahswaran') on 25 May 2008. At the time of their marriage, both the applicant and Nagahswaran professed the Hindu religion; in the applicant's words, she followed the 'Hindu-Buddha' religion. Their marriage was solemnised under the Law Reform (Marriage and Divorce) Act 1976.

[3] The marriage resulted in the birth of twin daughters, Sulochana a/p Nagahswaran and Sulochini a/p Nagahswaran, on 7 November 2008, and a son, Thatchina Moorthi a/l Nagahswaran, born on 26 May 2011. The applicant affirmed that, at all material times, the three children professed the Hindu religion and had not converted to Islam.

[4] Between 3 March 2019 and 21 February 2022, the applicant was separated from her children due to Nagahswaran's actions, including physical abuse and forcing her to leave the matrimonial home.

[5] On 13 December 2019, the applicant filed a divorce petition at the Kuala Lumpur High Court (Divorce Petition No WA-33–734–12 of 2019).

[6] Subsequently, on 7 January 2020, the applicant obtained an ad interim order from the Kuala Lumpur High Court granting her sole guardianship, care, and control of the three children. Despite being fully aware of this court order, Nagahswaran refused to comply and did not return the children to the applicant. Her attempts to regain custody of her children were unsuccessful.

[7] Following this, on 7 July 2020, Nagahswaran converted to Islam and attempted to also convert his three children. Subsequently, the applicant and Nagahswaran were divorced pursuant to a Kuala Lumpur High Court order dated 23 September 2021.

[8] The applicant, through her solicitors, sought clarification from the first respondent, the Registrar of Mualafs, Perlis, on the status of the alleged conversion to Islam of the three children since it was made without the applicant's consent as their lawful mother.

[9] In response to the applicant's inquiries, the second respondent, Majlis Agama Islam dan Adat Istiadat Melayu Perlis, stated that the conversion of the three children had been made with the consent of their father, Nagahswaran. The second respondent referenced s 117(b) of the Perlis Administration of the Religion of Islam Enactment 2006 in support of this assertion which they asserted authorised unilateral conversion.

[10] This forms the basis of the present judicial review and thereby the appeal. The High Court dismissed the judicial review on 11 May 2023. The Court of Appeal then set aside the High Court's order and allowed the judicial review on 22 January 2024.

[11] In essence, the grounds of appeal raised by the appellants can be summarised as follows: First, the Bahasa Malaysia version of the Federal Constitution was officially prescribed under art 160(a) when the Yang di-Pertuan Agong attended the launch of its translation. Second, the terms 'parent' and 'parents' are used to connote specific meaning in the Federal Constitution, a point they assert was not addressed in the Federal Court decision in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 ('Indira Gandhi'). Third, the decision in *Indira Gandhi* is limited to Wilayah Persekutuan Putrajaya, Kuala Lumpur, and Labuan, and does not apply to Perlis. Fourth, the present case is akin, in fact and principle to the case of *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal* [2025] 1 MLJ 334; [2024] 5 CLJ 855, and should apply such that the minors in question have been validly converted.

AUTHORITATIVE TEXT OF THE CONSTITUTION

[12] The authoritative text of the Constitution is the English version. As explained in *Indira Gandhi*, the Yang di-Pertuan Agong has not prescribed the Bahasa Malaysia translation as authoritative, as required by art 160B of the Federal Constitution.

Indira Gandhi, [153]:

> [153] The High Court held that since the requisite prescription of the national language version under art 160B above has not been effected, the authoritative or official text is the English version. The learned JC observed that the senior federal counsel had not submitted otherwise. In the present appeals, despite the learned state legal adviser's reliance on art 160B, no evidence of the necessary prescription was adduced by either of the respondents. In the circumstances, we will proceed on the basis that the English version to be authoritative.

[13] As such, the appellant's contention cannot stand.

SUMMARY OF INDIRA GANDHI

[14] As alluded to earlier, the crux of the appellant's submissions revolve around the correctness of *Indira Gandhi*. It is therefore apposite for us to recapitulate the key points that were made in that case:

(a) matters of constitutional and statutory interpretation, as well as review of the actions of public authorities, lie squarely within the jurisdiction of the civil courts.
Indira Gandhi, [101]:

> [101] It is not disputed that the Registrar of Muallafs was exercising a statutory function as a public authority under the Perak Enactment in issuing the said Certificates. As had been clearly manifested earlier, the jurisdiction to review the actions of public authorities, and the interpretation of the relevant state or federal legislation as well as the Constitution, lie squarely within the jurisdiction of the civil courts. This jurisdiction, which constitutes the judicial power essential in the basic structure of the Constitution, is not and cannot be excluded from the civil courts and conferred upon the Syariah Courts by virtue of art 121(1A).

Indira Gandhi, [107]–[108]:

> [107] It is not disputed that the Registrar of Muallafs was exercising a statutory function as a public authority under the Perak Enactment in issuing the said certificates. As had been clearly manifested earlier, the jurisdiction to review the actions of public authorities, and the interpretation of the relevant state or federal legislation as well as the Constitution, lie squarely within the jurisdiction of the civil courts. This jurisdiction, which constitutes the judicial power essential in the basic structure of the Constitution, is not and

cannot be excluded from the civil courts and conferred upon the Syariah Courts by virtue of art 121(1A).

[108] We need to emphasise this. *That the determination of the present appeals does not involve the interpretation of any Islamic personal law or principles*. This has to be made clear. The yardstick to determine the validity of the conversion is the administrative compliance with the express conditions stated in ss 96 and 106 of the Perak Enactment, namely the utterance of the affirmation of faith (the Kalimah Syahadah) and the consent of the parent. *The subject matter in the appellant's application is not concerned with the status of her children as Muslims converts or with the questions of Islamic personal law and practice, but rather with the more prosaic questions of the legality and constitutionality of administrative action take n by the registrar in the exercise of his statutory powers.* This is the pith of the question at hand.

(b) where there is a statutory provision stating that a certificate of conversion to Islam constitutes conclusive proof of the facts stated therein (see for instance s 112(2) of the Perlis Administration of the Religion of Islam Enactment 2006 in the present case and s 101(2) of the Administration of the Religion of Islam (Perak) Enactment 2004 in *Indira Gandhi*), this only relates to the *facts* stated in the certificate eg that the relevant names have been registered with the Registrar of Mualafs. It *does not* mean that the certificates and the conversion it records are legal.
Indira Gandhi, [126]–[127] and [133]:

[126] In our view therefore, *based on the principles in Anisminic, the lack of jurisdiction by the Registrar renders the Certificates issued a nullity. Section 101(2) cannot have the effect of excluding the court's power of judicial review over the Registrar's issuance of the Certificate. It is settled law that the supervisory jurisdiction of courts to determine the legality of administrative action cannot be excluded even by an express ouster clause.* It would be repugnant to the rule of law and the judicial power of the courts if the Registrar's decision is immune from review, even in light of uncontroverted facts that the Registrar had no jurisdiction to make such a decision.

[127] In any case, the language of s 101(2) itself does not purport to oust judicial review. The section merely states that a Certificate of Conversion to the religion of Islam shall be conclusive proof of the facts stated therein. The facts stated in the Certificate are that the persons named have been converted to the religion of Islam, and that their names have been registered in the Registrar of Muallafs. In the instant appeals, the *fact* of the conversion or the registration of the appellant's children are not challenged. What is challenged is the legality of the conversion and registration.

...

[133] ... In these circumstances, the contention that since the certificate conclusively states that the Registrar had registered the conversion of the children, the process of conversion must have been done to the satisfaction of the Registrar in accordance with the Enactment, is untenable at best.

Abang Iskandar FCJ in *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal* [2025] 1 MLJ 334; [2024] 5 CLJ 855 ('Dahlia Dhaima') affirms this, [61]–[62]:

> [61] As regards the conclusiveness of the certificate of conversion in respect of the facts stated therein contained in s 74(3) of the 1989 Enactment, I find support of the decision of the Federal Court in *Indira Gandhi a/ p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 which has held on the same point of conclusiveness of the certificate of conversion in s 101(2) of the Administration of the Religion of Islam (Perak) Enactment 2004. It held that:
>
> > [133] In any case, the language of s 101(2) itself does not purport to oust judicial review. The section merely states that a certificate of conversion to the religion of Islam shall be conclusive proof of the facts stated therein. The facts stated in the certificate are that the persons named have been converted to the religion of Islam, and that their names have been registered in the Registrar of Muallafs. In the instant appeals, the fact of the conversion or the registration of the appellant's children are not challenged. What is challenged is the legality of the conversion and registration.
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> [62] Thus, in respect of QOL 3, although s 74(3) renders the certificate of conversion conclusive proof as to the facts stated therein, one is not precluded from challenging the correctness and the validity of the process leading to the statement of the facts in the certificate of conversion and/or its issuance. Thus, if it can be shown that the facts stated in the certificate of conversion was incorrectly stated; or if the certificate was issued not according to law, that conclusiveness is bound to be reviewed.

(c) with this premise established, *Indira Gandhi* therefore ruled that the consent of both parents was constitutionally required in order for certificates of conversion to have the force of law. In other words, the word 'parent' in art 12(4) of the Federal Constitution should be read as meaning both parents.

Indira Gandhi, [181]:

> [181]: Based on a purposive interpretation of art 12(4) read with the Eleventh Schedule of the Federal Constitution, and on an application of ss 5 and 11 of the GIA, *it is concluded that the consent of both the appellant and her husband are required before a certificate of conversion to Islam can be issued in respect of the children.*

(d) it is clear that this was a conclusion arrived at after full consideration of the constitutional and statutory context; in other words, the appellant's argument that 'parent' and 'parents' are sometimes used to specifically denote the singular and plural in other constitutional provisions does not withstand scrutiny. The exhaustive examination in *Indira Gandhi* of the specific constitutional context and subject matter of art 12(4) explains

why this provision requires 'parent' to be read as being plural (*Indira Gandhi*, [142]–[181]). Indeed, the specific argument that *Indira Gandhi* was *per incuriam* was rightly rejected by the Court of Appeal in *Pendaftar Muallaf Wilayah Persekutuan v Lee Chang Yong & Ors and another appeal* [2022] 1 MLJ 653 by Nordin Hassan JCA (later FCJ);

(e) the Syariah Courts have full power to decide all matters within their jurisdiction. Where however they act outside their jurisdiction, the civil courts retain the supervisory power to correct this error; in other words, a decision made by the Syariah Courts *outside their jurisdiction* can be set aside by the civil courts. Put more simply in the context of conversion, where a Syariah Court incorrectly determines that what is in fact an *ab initio* case is a renunciation case, the civil courts have the power to step in and correct this.

Indira Gandhi, [86]:

> [86] ... The purport and effect of art 121(1A) is eloquently explained by Harding as follows:
>
> > The amendment does not purport to oust the jurisdiction of the High Court to review decisions of the Syariah Courts. It merely says, in effect, that the ordinary courts cannot exercise the Syariah Court's jurisdiction, a position which it should be noted, applies to any inferior jurisdiction; it is indeed a cardinal principle of judicial review that the court cannot substitute its decision for that of the inferior jurisdict ion whose decision is reviewed. It does not therefore seem possible that the Syariah Courts, by this small amendment, have been converted into a totally separate legal system ... As things stand the civil courts exercise the power of judicial review and this is of course part of the judicial power. Nothing in cl 1A attempts to interfere with this proposition ... For these reasons it seems that cl 1A was enacted for the avoidance of doubt. It seeks to ensure that decisions made within jurisdiction by the Syariah Courts are not reversed by the civil courts. *The qualification 'made within jurisdiction' is important; the ordinary courts can still decide whether a given decision is within jurisdiction, just as they can with any inferior court. In this sense the primacy of the civil courts has not been disturbed.* (Emphasis added by Zainun Ali FCJ.)

Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 323, [64] (as reiterated in *SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener)* [2022] 2 MLJ 356, [30]):

> [64] We agree with His Lordship generally on the approach to be taken by the courts in determining jurisdiction. However, in light of the judgments of this court in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 and *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545*, in all cases, the civil Superior Courts retain supervisory jurisdiction which is inherent in their function under arts 4(1) and 121(1) of the FC. Thus, unless their jurisdiction is very clearly excluded by virtue of subject-matter under*

art 121(1A), the question that the civil Superior Courts have no jurisdiction to determine any form of dispute does not arise.

(f) this is made clear as early on as *Viran a/l Nagapan v Deepa a/p Subramaniam and other appeals* [2016] 1 MLJ 585 ('Viran') where the court held that the Syariah Court's custody order was 'of no effect due to want of jurisdiction'.
Viran, [31]:

> We adopt the same view. Thus, on the facts of this case, the Syariah High Court has no jurisdiction to dissolve the civil marriage between the ex-husband and the ex-wife and to make an order granting custody of the two children out of the marriage to the ex-husband. The jurisdiction to do that is with the civil court. In consequence, the Syariah Court's order in dissolving the marriage between the ex-husband and the ex-wife and granting custody of the children to the ex-husband is of no effect due to want of jurisdiction.

See also *Eu Finance Berhad v Lim Yoke Foo* [1982] 2 MLJ 37; [1982] CLJU 21:

> Where a decision is null by reason of want of jurisdiction, it cannot be cured in any appellate proceedings; failure to take advantage of this somewhat futile remedy does not affect the nullity inherent in the challenged decision. The party affected by the decision may appeal 'but he is not bound to (do so), because he is at liberty to treat the act as void.

(g) consent or agreement cannot confer jurisdiction upon a court or tribunal; put another way, the fact that an individual consented to the jurisdiction of either the civil or the Syariah Court has no bearing whatsoever on whether the court they consented to is *in fact* the court that has jurisdiction over their case.
Indira Gandhi, [68]:

> [68] It is not open for the Syariah Courts to enlarge their own jurisdiction by agreements: 'it is a fundamental principle that no consent or acquiescence can confer on a court or tribunal with limited statutory jurisdiction any power to act beyond that jurisdict ion' (*Federal Hotel Sdn Bhd v National Union of Hotel, Bar & Restaurant Workers* [1983] 1 MLJ 175).

(h) as an example, if an individual goes to the civil courts when their application for conversion is *in actual fact* a renunciation case, the civil courts nevertheless have no jurisdiction over the matter. Similarly, if an individual goes to the Syariah Courts when their application for conversion is more accurately described as an *ab initio* case, the Syariah Courts nevertheless have no jurisdiction over the matter.

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[15] Since *Indira Gandhi* was decided, it has been reaffirmed and developed upon at length. This is demonstrated by the express and implied affirmation of

Indira Gandhi, *inter alia,* in the following decisions by our apex court: (*Alma Nudo Atenza v Public Prosecutor and another appeal* [2019] 4 MLJ 1; *Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 323; *SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener)* [2022] 2 MLJ 356; *Dhinesh a/l Tanaphll v Lembaga Pencegahan Jenayah & Ors* [2022] 3 MLJ 356; *Ketheeswaran a/l Kanagaratnam & Anor v Public Prosecutor* [2024] 1 MLJ 851).

[16] What is clear therefore is that both the logic and precedential weight of *Indira Gandhi* is unassailable; there can be no argument of any merit that it was decided *per incuriam*.

[17] Nevertheless, we find it necessary to outline some of the developments in the law surrounding constitutional religious identity for the sake of clarity of *Indira Gandhi*'s application to the present facts.

[18] In particular, the distinction made in *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 3 CLJ 301 ('Rosliza') between *ab initio* and renunciation cases is relevant. This was also a case relied on by the learned High Court judge in his consideration of the present case; it is therefore helpful to make clear exactly what *Rosliza* is authority for:

(a) the phrase 'professing the religion of Islam' as described in item 1, List II, Ninth Schedule of the FC ('State List') is a constitutional provision. Therefore, ascertaining its meaning is strictly a task for the civil courts. *Rosliza*, [103]–[104]:

> [103] All judicial power vests solely in the civil superior courts as per the basic structure of our FC ingrained in art 121. However, art 121(1A) dispossess the civil courts of jurisdiction ratione materiae once it is established that the subject-matter of the suit is one which falls within the jurisdiction of the Syariah Courts. Having said that, in ab initio cases, the issue before the court is not one of faith. It is a question of one's identity under the FC. In contrast, renunciation cases concern persons who despite being Muslims, no longer have faith or believe in the religion.
>
> [104] The phrase 'professing the religion of Islam' is a provision of the FC. Ascertaining the meaning of any provision of the FC is a judicial power classified broadly under the umbrella of judicial review and accordingly, it is a power vested strictly and only in the civil superior courts.

(b) before the civil courts determine whether it is they or the Syariah Courts that have jurisdiction, the civil courts must first conduct a 'proper appreciation of the evidence' (*Rosliza*, [124]) to determine if the Syariah Court possesses jurisdiction 'rationae personae' and 'rationae materiae' (*Rosliza*, [78]–[80]);

(c) part of the determination of whether the Syariah Court has jurisdiction

'rationae personae' is determining whether the case is an ab initio case or one of renunciation;

(d) an ab initio case is where what is alleged is that the applicant was never a Muslim. Ab initio cases constitute those where there is insufficient proof that the applicant 'affirmatively professed the religion of Islam at the material time' (*Rosliza*, [98]). Without going into too much detail, these include but are not limited to the fact patterns present in *Rosliza* and *Azmi bin Mohamad Azam @ Roneey v Director of Jabatan Agama Islam Sarawak & Ors* [2016] MLJU 1558; [2016] 6 CLJ 562; and

(e) renunciation cases occur where what is alleged is that the applicant is no longer a Muslim. In other words, where one has always been a Muslim, the Syariah Courts' approval is required before the applicant is permitted to leave her religion (*Rosliza*, [91]). An example of this is the case of *Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain* [2007] 4 MLJ 585.

IS INDIRA GANDHI APPLICABLE TO THE PRESENT FACTS?

[19] The appellant argues that *Indira Gandhi* should be confined to Wilayah Persekutuan; we see no basis for this as the Federal Court judgment in *Indira Gandhi* is, as is the case for all Federal Court judgments, binding throughout the nation.

[20] We note also that the appellants raised a leave question essentially contending that the case of *Dahlia Dhaima* should be applied to the present facts.

[21] However, it is inapplicable. The effect of the illegality caused by failing to obtain one of the parent's consent cannot be cured by other extraneous factors, because it is a legal requirement pursuant to the provisions of the Federal Constitution that both parents' consent must be obtained. Other factors cannot detract from the constitutional requirement. This issue is examined in the ensuing paragraphs.

[22] Conversely, *Indira Gandhi* is clearly applicable to the instant case. As succinctly explained by the Court of Appeal, three minors were converted with the consent of only one parent; therefore, *Indira Gandhi* applies such that the conversions are *ab initio* null and void.

[23] In reading art 12(4) with art 160(1) of the Federal Constitution as well as in construing art 12(4) purposively, *Indira Gandhi* held that the consent of both parents is constitutionally required in order for the conversion of a minor to be legally valid (see also *Rosliza*, [68]–[69] and [96]). In other words, where

a minor has been unilaterally converted, the conversion is 'void and must be set aside' (*Indira Gandhi*, [185]).

Indira Gandhi, [149]–[150]:

> [149] The *pertinent provision in the Eleventh Schedule, read together with art 160(1)*, provides that in interpreting the Constitution:
>
> > Construction of singular or plural — words in the singular include the plural, and words in the plural include the singular.
>
> [150] *Applying the guide to interpretation to art 12(4), the position is fairly clear: the singular word 'parent' includes the plural 'parents'.* The religion of the minor child is to be decided by his 'parent' or 'parents' as the case may be'.

Indira Gandhi, [163]–[164]:

> [163] ... Conversion to another religion is a momentous decision affecting the life of a child, imposing o n him a new and different set of personal laws. Where a decision of such significance as the conversion of a child is made, it *is undoubtedly in the best interests of the child that the consent of both parents must be sought. The contrary approach of allowing the child to be converted on the consent of only one parent would give rise to practical conundrums.* The learned JC has described one such milieu (at para [35]):
>
> > If by 'parent' is meant either parent then we would have a situation where one day the converted parent converts the child to his religion and the next day the other parent realising this would convert the child back to her religion. The same can then be repeated *ad nauseam*.
>
> [164] *Such a scenario would undoubtedly be detrimental to the welfare of the child.* Since a literal construction of art 12(4) would give rise to consequences which the legislative could not possibly have intended, the article should not be construed literally (*Sukma Darmawan* at p 247). *A purposive reading of art 12(4) that promotes the welfare of the child and is consistent with good sense would require the consent of both parents (if both are living) for the conversion of a minor child.*

Indira Gandhi, [185]:

> [185] We also find that the certificates of conversion were issued without the consent of the appellant thus contravening art 12(4) of the Federal Constitution and ss 5 and 11 of the GIA. *The certificates of conversion are void and must be set aside.*

[24] Applying this reasoning, the Court of Appeal correctly concluded that the unilateral conversion of the appellant was void (Court of Appeal, [55]).

[25] The argument of the appellants otherwise, in effect, would reverse the Federal Court's holding in *Indira Gandhi* by encouraging the unconstitutional

practice of unilateral conversion to persist. Indeed, we remind ourselves of Zainun Ali FCJ's prescient reminder in *Indira Gandhi* that unilateral conversion, in all its forms, will be unjustifiably detrimental to the welfare of the child (*Indira Gandhi*, [163]–[164]). A

[26] Therefore, there is no prima facie case of success in the appeal and the application for leave to appeal is dismissed. B

Abu Bakar Jais FCJ (delivering supporting judgment of the court):

[27] I have read the written judgment drafted by my learned sister, Nallini Pathmanathan FCJ regarding the decision we made in respect of this case. We unanimously refused leave to appeal to this court on 14 May 2024. C

[28] In respect of the present case, I wish to point out that I was also a member of the panel in this court with regard to the case of *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal* [2025] 1 MLJ 334; [2024] 5 CLJ 855. This is also a case of conversion. D

[29] I only would wish to reiterate what I have alluded to in *Dahlia* as follows.

[30] First, only the Syariah Courts have jurisdiction over apostasy cases in view of this court earlier decision in *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 3 CLJ 301. E

[31] In *Dahlia*, I also found as follows:

> [80] Utmost is the fact that the appellant agreed without restrain the Syariah High Court had the requisite jurisdiction to make the finding and come to a decision in respect of her challenge with regard to her status. She had willingly entrusted the Syariah Courts to determine the truth of her case. By filing her case at the Syariah High Court, she had conscientiously and with full capacity, considering her age at that time, accepted the jurisdiction of the same and submitted herself to that court. F G

[32] In *Dahlia* too, it is crucial to note that the appellant was not a minor when she decided to go to the Syariah Courts and more importantly the appellant was a Muslim when she sought to be declared no longer a Muslim from the Syariah Courts. This is how it is stated in *Dahlia*: H

> [136] First, when the appellant went to the Syariah High Court, she admitted she was a Muslim. That is proven by the declaration she requested — to be declared no longer a Muslim. Therefore, at the outset there is no issue she was a non-Muslim solely regarded as a Muslim.

[33] Dahlia must be taken or understood according to the peculiar facts of that case. I

[34] Having noted all of the above, I wish to say I agree that in our present case, the application for leave to appeal ought to be dismissed.

Application for leave dismissed.

Reported by Ashok Kumar